

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

#### REPLY BRIEF FOR THE APPELLANT

## Ex parte Carlos MANZANARES

# METHOD AND HIERARCHICAL RADIO NETWORK OPERATIONS SYSTEM FOR CONTROLLING A MOBILE COMMUNICATIONS NETWORK

Serial No. 10/736,632 Appeal No.: Group Art Unit: 2419

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Sheetal S. Patel

Attorney for Appellant

Keb. 110. 46,621

Reg. No. 59,326

SQUIRE, SANDERS & DEMPSEY L.L.P. 8000 Towers Crescent Drive, 14<sup>th</sup> Floor Vienna, VA 22182-6212

Atty. Docket No.: 059864.01704

SSP/dk

**Encls: Reply Brief** 



In re the Appellant:

Appeal No.:

Carlos MANZANARES

Group Art Unit: 2419

Serial Number: 10/736,632

Examiner: Salman AHMED

Filed: December 17, 2003

Atty. Docket No.: 059864.01704

METHOD AND HIERARCHICAL RADIO NETWORK OPERATIONS SYSTEM For:

FOR CONTROLLING A MOBILE COMMUNICATIONS NETWORK

#### REPLY BRIEF

April 27, 2009

#### I. INTRODUCTION

This Reply Brief is filed in response the Examiner's Answer mailed April 15, 2009. In the Examiner's Answer, while no new grounds of rejection were explicitly made, comments and explanations are provided which are tantamount to new points of argument. This Reply Brief, therefore, is submitted to address these new points of argument, and to clarify why all of claims 1-24, which are currently pending in the application, should be considered patentable over Park et al. (U.S. Patent Publication No. 2002/0006779), Sabat et al. (U.S. Patent Publication No. 2001/037395), 3GPP ("3GPP TS 32.600"), and therefore, should be found by this Honorable Board of Patent Appeals and Interferences to be allowable.

This Reply Brief addresses a few of the deficiencies of the Examiner's Answer. Appellant's Appeal Brief, however, is maintained, and failure to repeat the arguments contained therein, or to address one or more arguments set forth in the Examiner's Answer should not be construed as a waiver or an admission. The Appeal Brief speaks for itself, and this Reply Brief merely supplements the Appeal Brief to address certain aspects of the Examiner's Answer.

#### II. STATUS OF CLAIMS

Claims 1-24 are currently pending in the above-identified application. Claims 4, 5, 13-15, and 17-20 were objected to in the April 29, 2008 Office Action, because these claims were dependent upon a rejected base claim, but would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Claims 1-3, 6-12, 16, and 21-24 were rejected to in the April 29, 2008 Office, and, therefore, claims 1-3, 6-12, 16, and 21-24 are the subject of this appeal. Claims 1, 2, 7, 9-11, and 21-24 were rejected under 35 U.S.C. § 102(a) as being anticipated by Park et al. (U.S. Patent Publication No. 2002/0006779, hereinafter "Park"). Claims 3 and 12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Park in view of Concept and main requirements 3GPP TS 32.600 4.0.0 Release 4 (3GPP) and further in view of U.S. Patent Publication No. 2001/0037395 to Sabat Jr. et al. ("Sabat"). Claims 6, 8, and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Park and further in view of 3GPP.

#### **III. APPELLANT'S ARGUMENTS**

Appellant respectfully submits that each of pending claims 1-24 recite subject matter which is neither disclosed, either expressly or inherently, by the alleged cited prior art references. As discussed in the Appellant's Appeal Brief, Park et al. fails to disclose, either expressly or inherently, at least, "controlling a mobile communications network by a hierarchical radio network operations system with at least one radio network operations system on a subordinate level and a radio network operations system on a superior level, wherein the controlling comprises initiating a controlling action on the part of the radio network operations system on the superior level", as recited in claim 1.

In the Examiner's Answer, the Examiner asserted that Park et al. discloses, in Fig. 1 and paragraph [0049], controlling a mobile communications network by a hierarchical radio network operations system with at least one radio network operations system (e.g. alleged control station) on a subordinate level and a radio network operations system (e.g. alleged TMN network management center) on a superior level, wherein the controlling comprises initiating a controlling action on the part of the radio network operations system on the superior level. See, e.g., Examiner's Answer, page 17, lines 8-18. Specifically, the Examiner is of the position that "initiating a controlling action" (claim 1, line 5) is a broad term and could be broadly/reasonably interpreted as transfer of CMISE service executive instructions constitutes. See, e.g., Examiner's Answer, page 17, line 18 and page 19, line 12 to page 20, line 2.

However, Appellant respectfully disagree with the Examiner's unreasonable interpretation of the term "initiating". A person of ordinary skill in the art would clearly understand that "initiating" and "transferring" have two different meanings. According to

dictionary.com, the term "initiating" means "to being, set going, or originate". See, e.g., <a href="http://dictionary.reference.com/browse/initiating">http://dictionary.reference.com/browse/initiating</a>, downloaded on April 24, 2009. See also Attached Copy as Appendix A. To the contrary, the term "transferring" means "to be moved from one place to another". See, e.g., <a href="http://dictionary.reference.com/browse/transferring">http://dictionary.reference.com/browse/transferring</a>, downloaded on April 24, 2009. See also Attached Copy as Appendix B.

Therefore, Appellant respectfully submits that the Examiner's interpretation of broadly construing the term "initiating a controlling action" (claim 1, line 5) is unreasonable, as a person of ordinary skill in the art would not have reasonably interpreted the above-quoted term of claim 1 in manner that the Examiner has.

In the Examiner's Answer, the Examiner attempts to rely on paragraphs [0021] and [0048] to disclose "initiating a controlling action on the part of the radio network operations system on the superior level" (claim 1, lines 5-6) and "generating a call for data depending on the controlling action" (claim 1, line 7), respectively. See, e.g., Examiner's Answer, pages 20 and 23. The Examiner's position is clearly erroneous. Just because the TMN network management center 100 in Park et al. generates a CMISE service executive instruction and transfers the instruction to the TMN repeater within the BSM 200, it does not mean that "a controlling action [is initiated] on the part of the radio network operations system on the superior level...[and] a call [is generated] depending on the controlling action" (claim 1, lines 5-7). Paragraphs [0021] and [0048] of Park et al. clearly discusses that the CMISE service executive instruction is generated from the TMN network management center. This feature of generating in Park et al. is one single step and not two step. In claim 1, there are at least two steps that are being performed. The

first step being "initiating a controlling action" (claim 1, line 5) and the second step being "generating a call for data" (claim 1, line 7).

For the Examiner to allege that paragraphs [0021] and [0048] of Park et al. (which discuss generating instructions) disclose both "initiating a controlling action..." (claim 1, line 5) and "generating a call for data depending on the controlling action" (claim 1, line 7) is clearly erroneous. Without the Examiner providing further evidence as to how paragraphs [0021] and [0048] of Park et al. disclose two different steps, the Examiner's contention that Park et al. discloses, either expressly or inherently, at least, "initiating a controlling action on the part of the radio network operations system on the superior level; [and] generating a call for data depending on the controlling action" (claim 1, lines 5-7) cannot be reasonably maintained. In fact, the Examiner cannot provide such evidence, when Park et al. simply discusses that instructions are generated and transferred from the TMN network management center to the BSM. There is no motivation, suggestion, or teaching in Park et al. for the feature "initiating a controlling action...[and] generating a call for data depending on the controlling action" (claim 1, lines 5-7).

The Examiner is also of the position that the limitation "depending on the controlling action" (claim 1, line 7) is disclosed in paragraph [0052] of Park et al. See, e.g., Examiner's Answer, page 23. This position taken by the Examiner is incorrect, as paragraph [0052] of Park et al. is merely concerned with the local TMN repeater 301 of the control station 300 determining whether the instruction received from the BSM 200 is state information collection command, the sub block reset command, the MO generation command, or the MO erase command. There is no suggestion in paragraph [0052] of Park et al. as to how "depending on the controlling action" (claim 1, line 7) is a "call for

data [generated]" (claim 1, line 7"). In other words, there is no connection in paragraphs [0048] and [0052] of Park et al. to disclose "generating a call for data depending on the controlling action" (claim 1, line 7).

Furthermore, in the Examiner's Answer, the Examiner is of the position that paragraph [0049] of Park et al. discloses "forwarding the call to at least one of the radio network operations systems on the subordinate level <u>affected by the controlling action</u>" (claim 1, lines 8-9). However, this position is clearly erroneous, as Park et al. is not concerned with forwarding the call to any system that is affected by the controlling action.

In fact, Park et al. first transmits the CMISE service executive instruction to the TMN repeater 201 of the BSM 200. Park et al., paragraph [0049]. The BSM 200 determines whether the CMISE service executive instruction received from the TMN network management center 100 pertains thereto or to the control station 300. Park et al., paragraph [0050]. If the CMISE service executive instruction does not pertain to the TMN repeater 201 of the BSM 200, then the TMN repeater 201 of the BSM 200 transmits the CMISE service executive instruction to the local TMN repeater 301 of the control station 300. Park et al., paragraph [0051]. The local TMN repeater 301 then determines whether the service executive instruction is the state information collection command, the sub block reset command, the MO generation command or the MO erase command. Park et al., paragraph [0052]. If the service executive instruction is the state information collection command, the sub block reset command, the MO generation command or the MO erase command, the then TMN repeater 301 performs the state information collection operation and then transfers the result to the TMN network management center 100. Park et al., paragraph [0053].

In other words, the TMN network management center 100 of Park et al. generates instructions and then transfers to the instructions to the BSM 200 and lets the BSM 200 determine if the instructions pertain to the BSM 200 or not. This is clearly different from what is recited in claim 1. In claim 1, "the call [is forwarded] to at least one of the radio network operations systems on the subordinate level affected by the controlling action". Park et al. cannot disclose, either expressly or inherently, such a feature, as quoted above, because the TMN network management center 100 of Park et al. simply transfers the instructions to the BSM 200 regardless of whether the BSM 200 is affected by the instructions or not. Therefore, contrary to the Examiner's contentions, Park et al. cannot disclose, either expressly or implicitly, "controlling...hierarchical radio network operations system" in the context of claim 1 (i.e., "at least one radio network operations system on a superior level, wherein the controlling comprises initiating a controlling action on the part of the radio network operations system on the superior level" (claim 1, lines 2-6).

Appellant further submits that it is a requirement for a proper anticipation rejection under 35 U.S.C. § 102 that "[t]he identical invention must be shown in **as complete detail** as is contained in the ... claim.' *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)" (emphasis added). Moreover, "[e]very element of the claimed invention must be literally present, **arranged as in the claim**." *Id.* (emphasis added). Because Park et al. does not disclose each and every element as arranged in claim 1, the rejection of claim 1 cannot be reasonably maintained.

Accordingly, Appellant respectfully request that the rejection of claim 1 should be withdrawn and this claim be allowed for at least the reasons presented above.

#### Examiner's Answer of Claims 10 and 22-24

The Examiner is of the position that the subject matter of claims 10 and 22-24 are disclosed by Park et al. for at least the same reasons as claim 1. See, e.g., Examiner's Answer, page 28, line 12 to page 29, line 17. However, in light of the arguments presented above, Appellant respectfully requests that the rejection of claims 10 and 22-24 be withdrawn and these claims be allowed for reasons similar to those discussed above with respect to claim 1.

### **Examiner's Answer of Claim 2**

Regarding the rejection of claim 2, the Examiner is of the position that claim 2 should not be allowed because claim 1 is allegedly not allowable. See, e.g., Examiner's Answer, page 30. However, Appellant respectfully submit that the rejection of claim 2 be withdrawn and this claim be allowed for at least the same and/or similar reasons as base claim 1, and for the specific limitations recited in claim 2.

## **Examiner's Answer of Claim 7**

Regarding the rejection of claim 7, the Examiner is of the position that claim 7 should not be allowed because claim 1 is allegedly not allowable. See, e.g., Examiner's Answer, page 30. However, Appellant respectfully submit that the rejection of claim 7 be withdrawn and this claim be allowed for at least the same and/or similar reasons as base claim 1. Appellant respectfully submits that claim 7 should also be allowed, as the Examiner has failed to demonstrate how Park et al. discloses, either expressly or

implicitly, "network elements parameters and/or network resources parameters of the radio network on the subordinate level", as recited in claim 7.

#### Examiner's Answer of Claims 9 and 21

In the Examiner's Answer, the Examiner is of the position that paragraph [0026] and Fig. 1 of Park et al. discloses that "[the] radio network operations system on [the] subordinate level is an operations system for managing a regional radio network" (claim 9, lines 1-3). See, e.g., Examiner's Answer, page 31, lines 2-7. However, the Examiner's position is clearly incorrect.

As previously asserted by the Examiner, the control station 300 is allegedly a radio network operations system on a subordinate level. See, e.g., Examiner's Answer, page 17, lines 12-14. If the control station 300 of Park et al. is a radio network operations system on a subordinate level (which is not admitted), then the Examiner's position is clearly illogical.

Paragraph [0026] of Park et al. does not teach, suggest, or disclose that "[the] radio network operations system on [the] subordinate level is an operations system for managing a regional radio network" (claim 9, lines 1-3). Instead paragraph [0026] of Park et al. discusses that Fig. 1 (of Park et al.) illustrates an apparatus for managing a mobile communication network in an International mobile telecommunication (IMT)-2000 system by means of a telecommunication management network (TMN). In other words, Park et al. discusses that the TMN manages the mobile communication network in an International mobile telecommunication (IMT)-2000 system. Therefore, it is readily apparent that the control station 300 of Park et al. does not manage regional radio

network. Because the control station 300 of Park et al. does not manage regional radio network, Park et al. cannot reasonably be said to disclose, either expressly or implicitly, at least, the above-quoted feature of claim 9.

In the Examiner's Answer, the Examiner refers to Fig. 1 and alleged that the local TMN repeater manages base stations "#-"#64, which is regionalized under the local TMN repeater. See, e.g., Examiner's Answer, page 32. However, Appellant respectfully submits that the Examiner has failed to point out where in Park et al. is the Examiner's allegation supported. For example, there is no support in Park et al. for the allegation that the local TMN repeater manages base stations #0-#064, which is regionalized under the local TMN repeater. Instead, paragraph [0026] of Park et al. makes clear of the opposite, i.e., the TMN (and not the local TMN repeater) manages the mobile communication network in an IMT-2000 system.

Accordingly, Appellant respectfully requests that the rejection of claim 9 be withdrawn and this claim be allowed for at least the reasons presented above.

Because claim 21 recites a similar feature as claim 9, Appellant respectfully requests that the rejection of claim 21 be withdrawn and this claim be allowed.

# **Examiner's Answer of Claims 3 and 12**

In the Examiner's Answer, the Examiner is of the position that the rejection of claims 3 and 12 should be sustained, since claims 1 and 10 are allegedly not allowable. However, Appellant respectfully submits that the Examiner's position is incorrect.

Appellant respectfully submits that none of the references disclose, either expressly or implicitly, each and every element of claims 1 and 10. Claims 3 and 12

depend upon claims 1 and 10, respectively, and, therefore, inherit the patentable features thereof. Accordingly, Appellant respectfully requests that the rejection of claims 3 and 12 be withdrawn and these claims be allowed for at least the same and/or similar reasons as their respective base claims, and for the specific limitations recited therein.

#### Examiner's Answer of Claims 6 and 16

In the Examiner's Answer, the Examiner is of the position that paragraph [0062] of Park et al. discloses "controlling a configuration of radio network elements and/or radio network resources" (claim 6, lines 2-3). See, e.g., Examiner's Answer, page 34, line 16 to page 35, line 2. The Examiner is also of the position that page 13, section 5.2 of the 3GPP document discloses "monitoring...a configuration of radio network elements and/or radio network resources" (claim 6, lines 2-3). See, e.g., Examiner's Answer, page 35, line 3-9. However, Appellant respectfully submits that the Examiner's position is incorrect.

The 3GPP document discusses that a system monitoring service component provides an operator with the ability to receive reports on the configuration of the entire network or parts of its from the managed network element. 3GPP, page 13, lines 5.2. The 3GPP document further discusses that any inconsistencies found during the system monitoring by the network manager should be reported to the operator and is left to the operator to take appropriate actions. *Id*.

However, Appellant respectfully submits that the 3GPP document does not disclose, either expressly or implicitly, "controlling a mobile communications network by a hierarchical radio network operations system with at least one radio network operations

system on a subordinate level and a radio network operations system on a superior level", as recited in claim 1.

Because the 3GPP document does not disclose, either expressly or implicitly, a hierarchical radio network operations system, the 3GPP document cannot be said to reasonably disclose, either expressly or implicitly, "controlling action [on the part of the radio network operations system on the superior level] comprises monitoring... a configuration of radio network elements and/or radio network resources", as recited in claim 6.

Appellant further submits that Park et al. discusses a TMN network management center 100 that manages the pertinent control station 300 and the pertinent base station 400. Park et al., paragraph [0062]. However, as discussed, above, Park et al. does not disclose, either expressly or implicitly, "initiating a controlling action on the part of the radio network operations system on the superior level", as recited in claim 1.

Because Park et al. fails to disclose a controlling action in the context of claim 1, there can be no suggestion in Park et al. of "the controlling action...[includes] controlling a configuration of radio network elements and/or radio network resources", as recited in claim 6.

Therefore, Appellant respectfully submits that not only should claim 6 be found allowable for at least the same and/or similar reasons as base claim 1, from which it depends upon, but claim 6 should also be found allowable for at least the reasons presented above. Accordingly, Appellant respectfully requests that the rejection of claim 6 be withdrawn.

#### **Examiner's Answer of Claim 16**

Regarding claim 16, the Examiner's Answer rejected claim 16 for reasons similar to those presented with respect to claim 6. See, e.g., Examiner's Answer, page 35, line 14 to page 36, line 19.

Claim 16, which has its own scope, recites features similar to those recited in claim 6. Therefore, Appellant respectfully requests that the rejection of claim 16 be withdrawn and this claim be allowed for reasons similar to those discussed above with respect to claim 6 and additionally for at least the same and/or similar reasons as base claim 10, from which claim 16 depends upon.

### **Examiner's Answer of Claim 8**

In the Examiner's Answer, the Examiner is of the position that page 13, section 5.2 of the 3GPP document discloses, "the data demanded depending on the controlling action comprise topology data of the radio network on the subordinate level" (claim 8, lines 1-3). However, the Examiner's position is clearly incorrect.

As mentioned above, claim 1 recite, in part, that the "controlling action [is initiated] on the part of the radio network operations system on the superior level". A "call for data [is then generated] depending on the controlling action" (claim 1, line 7) and "forward[ed]...to at least one of the radio network operations systems on the subordinate level affected by the controlling action" (claim 1, lines 8-9).

Because claim 8 depends upon claim 1, the limitations of claim 1 must be considered when construing dependent claim 8. In view of claim 1, the 3GPP document does not disclose, either expressly or implicitly, at least, "the controlling action" of claim

8. Because the 3GPP document does not disclose "the controlling action" of claim 8, the 3GPP document cannot disclose, either expressly or implicitly, at least, that "the data demanded depend[s] on the controlling action" (claim 8, lines 1-2).

Furthermore, the 3GPP document, which was cited by the Examiner, simply discusses that the system monitoring service component provides an operator with the ability to receive reports on the configuration of the entire network or parts of its from the managed network element. 3GPP, page 13, lines 5.2. The 3GPP document does not suggest "topology" in the context of claim 8. Because of this failure in the 3GPP document, the Examiner appears to unreasonably construe the term "topology" as corresponding to "configuration of the entire network". See, e.g., Examiner's Answer, page 37, lines 11-14. For the Examiner to broadly (unreasonably) construe the term "topology" as being "configuration of the entire network" is incorrect. The Examiner has not provided any support as to how the term "configuration of the entire network" could be reasonably interpreted as "topology". Without the Examiner providing further support for Examiner's allegation, such a rejection cannot be reasonably maintained. In fact, a person of ordinary skill in the art would not reasonably interpret the 3GPP document to disclose, either expressly or implicitly, at least, "the data demanded...comprise topology data of the radio network on the subordinate level" (claim 8, lines 1-3) and that "the data demanded [is] depending on the controlling action" (claim 8, lines 1-2).

Accordingly, Appellant respectfully requests that the rejection of claim 8 be withdrawn and this claim be allowed, not only for the reasons presented above, but also for at least the same and/or similar reasons as base claim 1, from which it depends upon.

#### IV. CONCLUSION

As explained above and in the Appeal Brief, each of claims 1-24 recites subject matter which is neither disclosed nor suggested by Park et al., Sabat, Jr. et al., and 3GPP. Therefore, Appellant respectfully submits that the Final Office Action has failed to establish a prima facie case for anticipation and obviousness for at least the reasons presented above. This final rejection being in clear error, therefore, it is respectfully requested that the Honorable Board of Patent Appeals and Interferences reverse the Examiner's decision in this case and indicate the allowability of all of pending claims 1-24.

In the event that this paper is not being timely filed, the applicants respectfully petition for an appropriate extension of time. Any fees for such an extension together with any additional fees which may be due with respect to this paper may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,

Attorney for Applicant Registration No. 59,326

REG. No. 46,621

**Customer Number 32294** SQUIRE, SANDERS & DEMPSEY L.L.P. 14<sup>th</sup> Floor 8000 Towers Crescent Drive Vienna, Virginia 22182-6212 Telephone: 703-720-7800

Fax: 703-720-7802

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Enclosures: Appendix A

Appendix B

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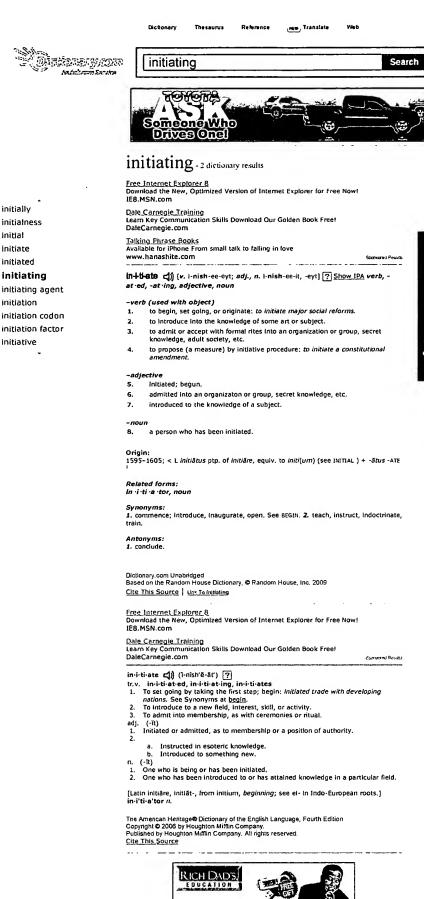
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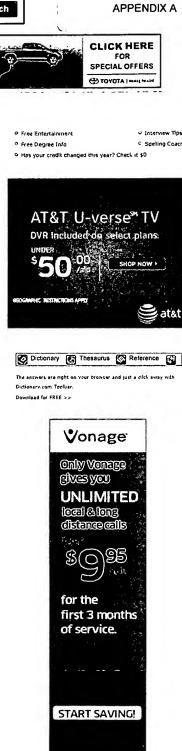
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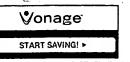
APPENDIX B

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trans-fer di [v. trans-fur, trans-fer; n., adj. trans-fer] ? Show IPA verb, ferred, -fer ring, noun, adjective

#### verb (used with object)

- to convey or remove from one place, person, etc., to another: He transferred the package from one hand to the other.
- to cause to pass from one person to another, as thought, qualities, or power;
- Law, to make over the possession or control of: to transfer a title to land.
- to imprint, impress, or otherwise convey (a drawing, design, pattern, etc.) from one surface to another.

#### -verb (used without object)

- to remove oneself from one place to another: to transfer from the New York office to London.
- to withdraw from one school, college, or the like, and enter another:  $\it I$  transferred from Rutgers to Tulane.
- to be moved from one place to another: to transfer to overseas duty.
- to change by means of a transfer from one bus, train, or the like, to another.

- a means or system of transferring.
- an act of transferring.
- the fact of being transferred.
- a point or place for transferring
- a ticket entitling a passenger to continue a journey on another bus, train, or the like.
- a drawing, design, pattern, or the like, that is or may be transferred from one surface to another, usually by direct contact.
- a person who changes or is changed from one college, military unit, business department, etc., to another.
- Law. a conveyance, by sale, gift, or otherwise, of real or personal property, to
- Finance, the act of having the ownership of a stock or registered bond 17.
- Also called **transfer of training**. *Psychology*. the positive or negative influence of prior learning on subsequent learning. Compare GENERALIZATION 18.
- Also called language transfer. Linguistics. the application of native-language rules in attempted performance in a second language, in some cases resulting in deviations from target-language norms and in other cases facilitating second-language acquisition.

#### -adjective

20. of, pertaining to, or involving transfer payments.

Origin: 1350-1400; ME transferren (v.) < L tränsferre, equiv. to träns- TRANS- + ferre to BEAR 1, carry

#### Related forms

trans-fer-a-ble, trans-fer-ra-ble, adjective trans-fer-a-bil-l-ty, noun trans-fer-rer, noun

Dictionary.com Unabridged Based on the Random House Dictionary, © Random House, Inc. 2009.

Cite This Source | Link To transferring

# trans-fer (1) (trāns-fūr', trāns'fər) ? v. trans-ferred, trans-fer-ring, trans-fers

- To convey or cause to pass from one place, person, or thing to another.

  Law To make over the possession or legal title of; convey.

  To convey (a design, for example) from one surface to another, as by impression

- To move oneself from one location or job to another.

  To withdraw from one educational institution or course of study and enroll in ano
  To change from one public conveyance to another: transferred to another bus.

  (trans
- (trais in)
  also trans-fer-al (trans-fur-al) The conveyance or removal of something from on
  One who transfers or is transferred, as to a new school.
  A design conveyed by contact from one surface to another.
- - a. A ticket entitling a passenger to change from one public conveyance to ano.
     b. A place where such a change is made.
     also transferal Law A conveyance of title or property from one person to anothe

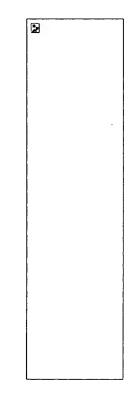
(Middle English transferren, from Old French transferer, from Latin transferre: trans-,

trans-fer'a-bil'i-ty n., trans-fer'a-ble, trans-fer'ra-ble adj., trans-fer'rer n.

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